Office of the Commissioner of Lobbying of Canada

Commissariat au lobbying du Canada

ANNUAL REPORT 10|11

OFFICE OF THE COMMISSIONER OF LOBBYING OF CANADA

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Cat. No. Lo1-2011
ISSN 1924-2468

Aussi offert en français sous le titre
Commissariat au lobbying du Canada, Rapport annuel 2010-2011

Free and open access to government is an important matter of public interest.

Lobbying public office holders is a legitimate activity.

It is desirable that public office holders and the public be able to know who is engaged in lobbying activities.

A system for the registration of paid lobbyists should not impede free and open access to government.

Commissioner of Lobbying Commissaire au lobbying

Ottawa, Canada K1A 0R5

The Honourable Andrew Scheer, M.P.
Speaker of the House of Commons
Room 316-N, Centre Block
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Mr. Speaker:

Pursuant to section 11 of the *Lobbying Act*, I have the honour of presenting to you the third annual report of the Commissioner of Lobbying for tabling in the House of Commons.

This report covers the fiscal year ending March 31, 2011.

Sincerely yours,

Karen E. Shepherd

Commissioner of Lobbying Commissaire au lobbying

Ottawa, Canada K1A 0R5

The Honourable Noël A. Kinsella
Speaker of the Senate
The Senate
Ottawa, Ontario
K1A 0A4

Dear Mr. Speaker:

Pursuant to section 11 of the *Lobbying Act*, I have the honour of presenting to you the third annual report of the Commissioner of Lobbying for tabling in the Senate.

This report covers the fiscal year ending March 31, 2011.

Sincerely yours,

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MESSAGE FROM THE COMMISSIONER OF LOBBYING

I am pleased to present the Annual Report for the Office of the Commissioner of Lobbying for 2010–2011.

My mandate is stated in the *Lobbying Act* (the Act) and covers three areas of activity: maintaining a registry of lobbyists that is accessible to Canadians; fostering greater awareness of the requirements of the Act through education and outreach; and, ensuring compliance with the legislation and the *Lobbyists' Code of Conduct* (the Code). As you will note in this report, much has been accomplished this year.

In the first two years since the coming into force of the Act in July 2008, I focused primarily on establishing a solid foundation for administering the new legislation. In 2010–2011, my Office completed the implementation of processes that were initiated the previous year to both expedite the registration of lobbyists and ensure lobbying activities were more transparent.

This report highlights the outcomes of these processes. For example, the average processing times for initial registrations was lowered from more than 20 days on average to just three days. As registrations disclose lobbying activities conducted at the federal level, I believe that transparency is greatly improved when this information is available to Canadians as quickly as possible. My Office also noticed that some consultant lobbyists are being 'sub-contracted' by lobbying firms to undertake lobbying activities on behalf of a third party. In the interest of transparency, I adopted the practice of requiring consultant lobbyists to disclose both the lobbying firm that has sub-contracted them, and the client they ultimately represent.

I believe awareness of the Act's requirements leads to greater compliance. I am proud of the achievement this year of meeting with nearly 1,500 individuals, including lobbyists, public office holders, parliamentarians and their staff, my counterparts, academics and university students. I appeared four times before the House of Commons Standing Committee on Access to Information, Privacy and Ethics and once before the House of Commons

Standing Committee on Procedure and House Affairs, in order to provide members of these committees with information about my Office's work.

The *Designated Public Office Holder Regulations* were amended in September 2010 to include Members of Parliament and Senators as 'designated public office holders' (DPOHs) for the purposes of the *Lobbying Act*. I provided parliamentarians with a broad range of information regarding the amended Regulations to help them understand their obligations under the *Lobbying Act*.

There have been many discussions this year of the interpretation and the application of Rule 8 (Improper Influence) of the *Lobbyists' Code of Conduct*, more specifically with respect to the involvement of lobbyists in political activities. In March 2009, the Federal Court of Appeal issued a decision that broadened the scope of circumstances in which Rule 8 applies. This decision has required a significant shift from the guidance originally issued by the former Ethics Counsellor. I provided my own guidance in November 2009 and in August 2010 to further clarify the issue, and I explained my position at presentations I gave during the year. I provided registered lobbyists with a reminder, after the election call in March 2011,

urging them to exercise caution with respect to political activities.

Regarding the enforcement of the Act, I have achieved several important results. This year, I tabled my first three Reports on Investigation in both Houses of Parliament. In these Reports, I found that three lobbyists had breached the Code. Two of the Reports dealt with lobbyists who engaged in political activities that, in my view, advanced the private interest of a public office holder with whom the lobbyists interacted during the course of their lobbying activities. Code of Conduct investigations and Reports to Parliament may not result in criminal convictions, heavy fines or imprisonment. I believe, however, that by exposing wrongdoing, they deter the individual from repeating the offence and provide all lobbyists with an incentive to comply with the Act and the Code.

In addition, the process for assessing allegations was streamlined to allow for an early determination of whether a transgression is minor in nature, or more serious. "Guiding Principles and Criteria for Recommending Compliance Measures" were also adopted. These guidelines document the approach that informs my decisions regarding the proper course of action in each case of an alleged breach of the Act or the Code. Application of these principles helps ensure that alleged breaches of the Act and Code are treated in a fair and consistent manner.

This year also marked the beginning of the legislative review of the *Lobbying Act*. I had the opportunity to share my views with the members of the House of Commons Standing Committee on Access to Information, Privacy and Ethics in March 2011. I indicated that several aspects of the Act are working and contributing to increased transparency of lobbying activities. However, I recommended a number of amendments to the Act that, I believe, would capture a greater share of lobbying activities and enable me to enforce the legislation more decisively. I summarized my experience and recommendations in a report entitled "Administering the *Lobbying Act* — Observations and Recommendations Based on the Experience of the Last Five Years", which I tabled at the Committee. This report is available on my Office's website.

My goal remains to ensure that both the *Lobbying Act* and the *Lobbyists' Code of Conduct* are administered in a way that fosters greater transparency and encourages high ethical standards in federal lobbying activities. I am looking forward to the challenges and opportunities that the coming year will bring. I have built a strong team to support my goal of increasing transparency and integrity in the lobbying regime. It is an honour to work with them and to serve Parliament and Canadians in this regard.

Karen E. Shepherd
Commissioner of Lobbying

FOSTERING TRANSPARENT LOBBYING ACTIVITIES

Transparency in lobbying activities is a key objective of the *Lobbying Act* (the Act). Public office holders and the public should know who is engaged in lobbying activities with the federal government. To that end, the Act mandates that the Commissioner of Lobbying establish and maintain a Registry of Lobbyists (the Registry), which is accessible 24 hours a day, seven days a week on my Office's website.

The Registry discloses details about who is being paid to communicate with federal public office holders and on what subject matter. It is the central source of information about individuals, not-for-profit organizations and for-profit corporations who lobby the federal government by communicating with elected officials or public servants. Over 5,000 lobbyists are registered with my Office, and, as the table below demonstrates, this number has remained relatively stable over the past few years.

ACTIVE LOBBYISTS BY TYPE (as of March 31)	2011	2010	2009
Consultant lobbyists	814	753	873
In-house lobbyists (corporations)	1,808	1,791	1,817
In-house lobbyists (organizations)	2,507	2,725	2,936
Total registered individual lobbyists (all types)	5,129	5,269	5,626

ACTIVE REGISTRATIONS BY CATEGORY (as of March 31)	2011	2010	2009
Consultant lobbyists (one registration per client)	2,136	2,229	2,253
Corporations	311	291	303
Organizations	484	434	487
Total active registrations (all categories)	2,931	2,954	3,043

The information contained in the Registry includes:

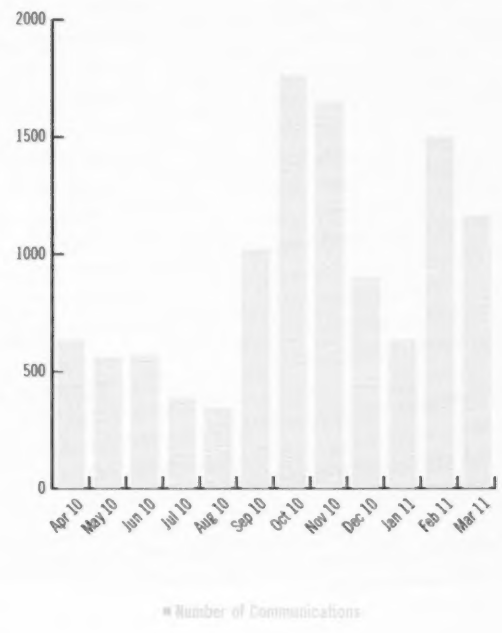
- who lobbies for which firms, corporations, organizations or associations;
- which parent and subsidiary companies or corporations benefit from lobbying activities;
- the organizational members of coalition groups;
- a general description of the subject matter of lobbying activities, as well as some details;
- which Government of Canada departments or agencies are being contacted;
- the names and descriptions of the specific legislative proposals, bills, regulations, policies, programs of interest and grants, contributions or contracts sought;
- the positions former public office holders have held within the Government of Canada before they started lobbying; and
- information regarding oral and arranged communications with designated public office holders.

The information contained in the Registry is publicly available online and is searchable by users at no cost. In addition to providing individual registrations, the system can produce standard reports that demonstrate such information as: the number of active lobbyists by type of lobbyist, the number of active registrations by type, the number of active registrations listing each subject matter, or the number of active registrations listing each federal government institution. It is also possible to generate a list of recent registrations, singling out new, updated or reactivated registrations, as well as registrations that have been terminated during the previous 30 days.

In accordance with the Act, registrants must disclose oral and arranged communications with designated public office holders (DPOHs) on a monthly basis. The Act defines DPOHs as senior federal government decision-makers, including ministers, their staff, deputy ministers and assistant deputy ministers. The Act also gives the Governor in Council the authority to further designate positions as DPOH by way of regulation. In July 2008, 11 positions were so designated, including seven senior positions in the Canadian Armed Forces, two classes of positions in the Privy Council Office, and the Comptroller General of Canada.

In September 2010, the Regulations were amended to expand the DPOH sub-category to include Members of the House of Commons and the Senate. These amendments resulted in a dramatic increase in the number of communication reports submitted by lobbyists, as demonstrated in the chart below. I believe that the reporting of these communications enhances the transparency of lobbying activities at the federal level. The Registration system is robust and is handling the significant increase in the volume of communication reporting with ease.

NUMBER OF ORAL AND ARRANGED COMMUNICATIONS DISCLOSED, BY MONTH



PROCESSING REGISTRATIONS FASTER

The information submitted by lobbyists in their initial registrations is reviewed by my Office for completeness and certified by the registrant for accuracy. In the interest of transparency, it is crucial that the information disclosed in a registration be made available publicly as soon as possible. To that end, significant efforts were dedicated this year to reduce processing times in order to accelerate the posting of registrations in the Registry. Processes have been simplified and streamlined with a view to ensuring that registrations are completed and published in the Registry faster and more efficiently.

As a result, the average processing time for initial registrations over the course of one year was reduced from more than 20 days to three days. I believe that this greatly improves transparency of lobbying activities at the federal level because information on federal lobbying activities is made available to Canadians sooner. Service standards for registration processing times have also been updated and implemented, and will be reported on in future annual reports.

ENSURING THE INTEGRITY OF THE REGISTRY DATA

The Registry of Lobbyists is a database that contains extensive information on lobbying activities conducted at the federal level since 1996. This past year, my Office has worked on developing protocols and quality assurance programs to ensure the integrity of the data contained in the Registry.

For example, a number of registrations containing what are referred to as "orphan" subject matters or government institutions have been identified. These "orphans" refer to a new subject matter or government institution added by registrants through a monthly communication report without amending the initial registration it related to, as required by the Act. Communication reports only disclose the broad subject matter being discussed, whereas initial registrations contain a range of details relating to that same subject matter, such as a description and title of a bill, policy or program, etc. A new feature was added to the Registry to require that registrants update their initial registrations when adding a new subject matter or government institution via a monthly communication report. This translates into improved transparency since it facilitates adherence to the requirements of the Act and, in particular, requires disclosure of the details relating to subject matters.

As part of its ongoing quality assurance program, my Office also realized that in some instances, the disclosure of the interests being represented by lobbyists was not entirely transparent. Some consultant lobbyists are being 'sub contracted' by lobbying firms to undertake lobbying activities and represent a third party, the ultimate client. The Act currently requires consultant lobbyists to disclose their 'client', which could be interpreted to be the consulting firm which has, in fact, hired the lobbyist, rather than the client he or she ultimately represents. In the interest of transparency, I adopted the practice of requiring consultant lobbyists to disclose both the lobbying firm for which they are working directly, as well as the client they ultimately represent. In my March 2011 submission to the House of Commons Standing Committee on Access to Information, Privacy and Ethics[1], I recommended that the Act be amended to make explicit the requirement for consultant lobbyists to disclose both the firm hiring them and the client they are ultimately representing.

Rigorous testing has always been undertaken whenever changes were made to the Lobbyists Registration System. Nevertheless, as a result of a coding error discovered in one of our online Statistical Reports in August 2010, I implemented measures to strengthen our quality assurance program. Upon discovering the error, my Office took steps to improve the testing of the system, and introduced enhanced data integrity checks. In addition, an internal audit of the registry system is planned for 2011-2012.

[1] Karen E. Shepherd, "Administering the *Lobbying Act* — Observations and Recommendations Based on the Experience of the Last Five Years", available at: www.ocl-cal.gc.ca.

STRENGTHENING STANDARDS FOR CLIENT SERVICE

I am proud of the quality of the services my Office provides to registrants and their efforts to continually improve it. Service standards are key to monitoring the performance of the organization and represent a valuable internal management tool. This year, client service standards were updated and expanded to provide a more cost-effective and efficient registration process. The revised standards will be implemented in 2011-2012.

According to our adopted service standards, my Office will aim to:

- activate user accounts within 24 hours upon receipt of a completed Registrant User Agreement;
- approve or provide feedback on registrations within three business days;
- answer telephone calls received during business hours within 30 seconds, 80% of the time;
- respond to phone messages within 24 hours;
- acknowledge receipt of e-mail inquiries within 24 hours; and
- respond to less complex e-mail inquiries within two business days, and within 14 calendar days to more complex questions.

In 2010-2011, a new call distribution and management system was implemented to respond more effectively to the needs of clients. As a result, more calls are being answered directly by Registration Advisors, rather than being sent to voicemail. One of the useful features of the system is that it allows callers to directly access their designated Registration Advisor. I believe this helps to simplify the registration process.

USING THE INFORMATION IN THE REGISTRY MORE BROADLY

Monthly communication reports, which were introduced by the *Lobbying Act*, have made a wealth of new information regarding communications between lobbyists and senior federal government decision-makers available to Canadians. The reports provide timely information on who is lobbying high level public office holders, and regarding which subject matter. This information increases transparency by providing a more complete picture of lobbying activities conducted at the federal level. With the expansion of the category of designated public office holder in September 2010, Canadians are now more aware when Members of Parliament and Senators have oral and arranged communications with registered lobbyists, and the subject matter of these discussions. Together with the extensive and detailed information contained in initial registrations submitted by lobbyists, these reports serve Canadians well in understanding the extent of lobbying activities conducted at the federal level. Media articles often reference the Registry of Lobbyists, and use the information contained within it to describe lobbying activities.

RESPONDING TO INCREASED REQUESTS FOR REGISTRY DATA

The current trend towards open government has resulted in an increased demand for my Office to provide Registry information in alternative formats. In 2010-2011, my Office responded to nine separate requests from media and academics for large-scale datasets of Registry information. The growing number of requests suggests that, while the availability of Registry data is contributing to increased transparency of lobbying activities, it is not structured in a way that readily allows for easy large-scale analysis. That is why my Office is working to determine how to organize the Registry data most effectively in order to facilitate analytical work, from which all Canadians may benefit.

IMPROVING TRANSPARENCY

The requirement for lobbyists to disclose their communications with designated public office holders enhances the transparency of lobbying activities. In 2010-2011, 11,098 communications were reported by lobbyists, an average of 925 per month. However, there is still room for improvement in this regard. In my March 2011 submission to the House of Commons Standing

Committee on Access to Information, Privacy and Ethics, I highlighted four areas where the *Lobbying Act* could be amended to further improve transparency.

First, the *Lobbying Act* currently requires corporations (for profit) and organizations (not-for profit) to be registered only once the threshold set by the significant part of duties test is met (currently interpreted as 20 percent of the equivalent of one person's time over a one-month period). If these lobbyists determine that they do not meet the threshold, they do not have to register. The Registry will, therefore, contain no information about their lobbying activities. As well, their oral and arranged communications with DPOHs are not required to be disclosed in monthly communication reports. For this reason, I recommended to Parliament that the provisions regarding the 'significant part of duties' be removed from the Act to require that all corporations and organizations register their lobbying activities. I further recommended that exemptions for some be considered to avoid creating an undue burden.

Second, the Act requires that monthly communication reports currently list the name of the DPOH with whom the communication took place and the name of the senior officer of a corporation or organization who is responsible for filing the registration. The Act does not require that the names of the in-house lobbyists who actually participated in the oral and arranged communication with the DPOH be listed in the monthly communication report. I, therefore, recommended that the Act be amended to require corporations and organizations to list the names of the lobbyists present during the communication as well as the name of the most senior officer.

Third, the Act currently requires lobbyists to file a monthly communication report only when the oral and arranged communication is initiated by the lobbyist. Communications relating to the awarding of grants, contributions or other financial benefits must be reported regardless of whether the lobbyist or the POH initiated the communication. For consultant lobbyists, this is also the case for communications relating to the awarding of a contract. I recommended that lobbyists be required to disclose all oral communications with DPOHs about prescribed subject matters, regardless of who initiates them.

Finally, the *Lobbyists Registration Regulations* prescribe that for the purposes of monthly communication reports, lobbyists should report all "oral and arranged" communications with DPOHs. I recommended that this provision be changed to require lobbyists to report all oral communications about prescribed subject matters, whether or not they were arranged in advance. This change would positively impact transparency since so-called 'chance' meetings between lobbyists and DPOHs, where prescribed subject matters are discussed, would be reportable.

REACHING OUT TO BUILD AWARENESS

The *Lobbying Act* (the Act) provides the Commissioner of Lobbying with an explicit mandate to develop and implement educational programs to foster public awareness of the requirements of the Act, on the part of lobbyists, their clients and public office holders (POHs).

IMPROVING COMPLIANCE THROUGH EDUCATION AND AWARENESS

I believe that communicating the rationale and requirements of the Act leads to better compliance. In 2010-2011, my staff and I met with nearly 1,500 individuals, including lobbyists, public office holders, parliamentarians and their staff, counterparts, academics and university students. In addition, I appeared four times before the House of Commons Standing Committee on Access to Information, Privacy and Ethics, and once before the House of Commons Standing Committee on Procedure and House Affairs, to provide members of these committees with information about my work, including my investigation process. In support of the statutory legislative review of the Act, I submitted a report in March 2011 to highlight key aspects of my experience in administering the Act and the *Lobbyists' Code of Conduct* (the Code) since 2005. The report also provides my recommendations for amendments to the *Lobbying Act*. I recommended that the education and awareness mandate remain in the Act.

GATHERING INFORMATION THROUGH OUTREACH

I believe that feedback received from stakeholders during outreach activities is important in ensuring that the information products provided by my Office meet their needs. In 2010-2011, a focus was applied to identifying recurring issues and questions raised during meetings with stakeholders. This analysis contributed to informing my recommendations about possible amendments to the Act.

For example, the requirement for organizations and corporations to register only when lobbying activities constitute a "significant part of duties" is complex and requires concerted effort to explain. For this reason (and others related to the enforcement of this provision of the legislation), I recommended that it be removed from the Act and that consideration be given to providing exemptions to some in order to avoid undue burden.

Similarly, what constitutes an 'arranged' communication with a designated public office holder (DPOH) is often misunderstood in practice by lobbyists and public office holders alike, and it is a requirement that I am regularly asked to explain during my presentations. It is my opinion that in determining which communications should be disclosed, confusion would be reduced if the Regulations were amended to require lobbyists to report oral communications with DPOHs, regardless of whether they are arranged in advance or not.

COMMUNICATING WITH LOBBYISTS

Significant effort and resources are devoted to communicating and sharing information with lobbyists about the requirements of the Act and the Code. In 2010-2011, my Office continued to respond to inquiries from lobbyists seeking clarification of various aspects of the Act, the related Regulations and the Code.

My staff and I met with several associations representing lobbyists, both consultant and in-house, including the Government Relations Institute of Canada, the Public Affairs Association of Canada, the Canadian Chamber of Commerce, and the Canadian Society of Association Executives. These interactions allowed us to provide information and answer questions about the requirements of the Act and share views with lobbyists on the administration of the legislation. These sessions provided lobbyists with opportunities to address issues of concern to them, and helped us identify areas where additional precision would benefit both the administration of, and compliance with the Act and the Code.

In addition, registered lobbyists were provided with information on specific changes to registration requirements during the year, via e-mail. The use of e-mail is a cost effective approach that complements my

website. It allows me to provide timely and important guidance and raise awareness about key aspects of the legislation, with a view to further improving compliance.

Advisory letters

Advisory letters are sent to individuals who appear to be engaging in lobbying activities but who are not registered. This year, 170 individuals, corporations and organizations were subject to compliance verification after my Office's monitoring activities revealed that they were lobbying federal public office holders. The majority (82%) were registered as required by the Act. Further analysis indicated that only five advisory letters needed to be sent to educate and assist potential registrants in determining if they needed to register. One recipient indicated that they were registered. Three responded that they did not meet the 'significant part of duties' threshold for registration set out in the Act. The remaining recipient has yet to reply.

Commissioner's Guidance

Following a Federal Court of Appeal decision issued in March 2009[1], I issued guidance to lobbyists on Rule 8 (Improper Influence) of the Code, which deals with Conflict of Interest. Following the release of the guidance, several lobbyists expressed a need to better understand how I would assess the issue of political activities as it relates to Rule 8. In response, I issued clarifications about political activities in the context of Rule 8. When the 41st general election was called in March 2011, I sent a message, via e-mail, to all registered lobbyists. This message reminded them that engaging in political activities may risk placing a public office holder in a real, or apparent, conflict of interest. I urged lobbyists to exercise caution and keep in mind that:

- Working on a political campaign to support the election of a public office holder is, in my opinion, advancing the private interest of that public office holder.
- A real or apparent conflict of interest can be created when a lobbyist engages in political activities that advance the private interest of a public office holder, while at the same time, or subsequently, seeking to lobby that public office holder.
- In the case of a minister or minister of state, a real or apparent conflict of interest can be created when a lobbyist engages in political activities that advance the private interest of the minister or minister of state, while at the same time, or subsequently, seeking to lobby public office holders working in the department for which the minister or minister of state is responsible.
- Temporary deregistration during the election campaign may not be sufficient to avoid creating a real, or apparent, conflict of interest.

Reaction to the guidance has been mixed. A few lobbyists have argued that the guidance was unclear as to what political activities are allowed. Others have expressed appreciation for the reminder and the additional clarifications provided, and have indicated that the guidance enabled them to arrange their affairs appropriately. Some lobbyists have raised concerns that I have placed unfair limits on their right to participate in the democratic process. I have been clear, however, that I recognize the legitimacy and legality of both political activities and registrable lobbying activities. The issue of conflict of interest, and the application of Rule 8 of the *Lobbyists' Code of Conduct*, may arise when the two types of activities intersect.

EDUCATING PUBLIC OFFICE HOLDERS

I believe that federal public office holders, whether they are elected officials or public servants, have a key role to play in ensuring a better understanding of the *Lobbying Act* and its requirements. When public office holders understand the objectives of the Act, they can contribute to greater compliance by inquiring if the lobbyists they meet are aware of the Act and its requirements.

My staff and I meet regularly with management teams and other officials in departments and agencies across the

[1] *Democracy Watch v. Barry Campbell and the Attorney General of Canada (Office of the Registrar of Lobbyists)*, 2009 FCA 79.

federal public service. These sessions provide an effective forum for sharing information and views on issues relating to lobbying activities and the requirements of the Act.

This past year, I met with representatives of several Regional Federal Councils in the context of their regularly scheduled meetings. Regional Federal Councils are intended to provide federal officials in the regions with a forum to share views and concerns on issues that are common to the federal departments and agencies located in each region of the country. This series of meetings helped ensure that federal public office holders located outside of the National Capital Region were aware of the requirements of the Act.

ASSISTING PARLIAMENTARIANS

The Commissioner of Lobbying is an independent Agent of Parliament and, as such, I report directly to both Houses of Parliament. I appear primarily at the House of Commons Standing Committee on Access to Information, Privacy and Ethics to report on my activities. In so doing, I endeavour to provide all necessary information to help parliamentarians better understand my mandate under the Act and allow them to appropriately perform their oversight function.

The *Designated Public Office Holder Regulations* were amended in September 2010 to include Members of Parliament and Senators as designated public office holders (DPOHs). Upon the coming into force of the amended Regulations, I provided the new DPOHs with a broad range of information about the implications of that change in order to help them understand their responsibilities under the *Lobbying Act*. My Office prepared a document entitled "Ten Things You Should Know about Lobbying", a copy of which was distributed to all Members of Parliament and Senators. I also reached out to all registered lobbyists and reminded them of key aspects of the disclosure requirements for lobbyists, particularly as these related to communications with Members of Parliament and Senators as DPOHs. By invitation, I attended several party caucus meetings in both the House of Commons and the Senate to follow up on the information I provided in writing and answer questions.

CONNECTING WITH COUNTERPARTS

The community that works to ensure that lobbying is conducted in an ethical and transparent manner is relatively small. It is critical to establish and maintain a network to connect federal, provincial and international counterparts in order to share experiences and best practices, and discuss ways to address existing and emerging challenges in various jurisdictions.

In September 2010, the Lobbyists Registrars and Commissioners of Canada held our annual meeting in St. John's, Newfoundland. Representatives from my Office, the provinces of Alberta, British Columbia, Newfoundland and Labrador, Nova Scotia, Ontario, Quebec and Manitoba, as well as the City of Toronto, came together to share experiences from the previous year, and to discuss best practices and challenges. At that meeting, the group determined that it would benefit from more regular contact. As a result, we met again in February 2011 to discuss a number of important issues, such as the value of lobbyists' codes of conduct, and to compare and share views on investigatory powers and processes.

I am active on the international front. Specifically, I attended the annual Council on Governmental Ethics Laws (COGEL) conference in Washington, DC, where I participated in a panel to present my perspective on the federal lobbying regime in Canada. I also shared my views, via teleconference, with representatives of the New South Wales (Australia) Independent Commission against Corruption's inquiry into the corruption risks involved in lobbying.

REACHING OUT TO CANADIANS THROUGH THE WEBSITE

My website is a cost effective tool to disseminate a broad range of information to lobbyists, public office holders, parliamentarians, media and the general public. The educational material prepared by my Office is updated regularly, and includes:

- multimedia tutorials that detail the registration process;
- PowerPoint presentations that highlight the key features of the *Lobbying Act*;
- interpretation bulletins and advisory opinions explaining important requirements of the Act; and
- guidance material on the application of the rules under the *Lobbyists' Code* of Conduct.

This year, visits to the website increased by 23% – from 89,603 to 110,390. I recognize the importance of communicating through the website, and work has begun to redesign the site with an emphasis on improving navigation. These changes will be implemented in 2011-2012.

SURVEYING STAKEHOLDERS

My Office recognizes the need to assess its outreach tools and techniques. A survey has been developed and will be administered to stakeholders in the next fiscal year, with a view to helping target future outreach efforts where they are needed most.

ENSURING COMPLIANCE WITH THE ACT AND THE CODE

As mentioned earlier, I believe that education and outreach activities are key to fostering greater compliance with the *Lobbying Act* (the Act) and the *Lobbyists' Code of Conduct* (the Code). However, in order to be fully effective at deterring non-compliance by lobbyists, these activities must be complemented with a program of monitoring, carrying out administrative reviews, and conducting investigations.

To ensure the integrity of the data submitted by lobbyists in monthly communication reports, my Office corresponds with a sample of designated public office holders to verify the accuracy of this information. In addition, my Office reviews applications for exemption from the Act's five-year prohibition on lobbying.

LOOKING INTO POTENTIAL BREACHES

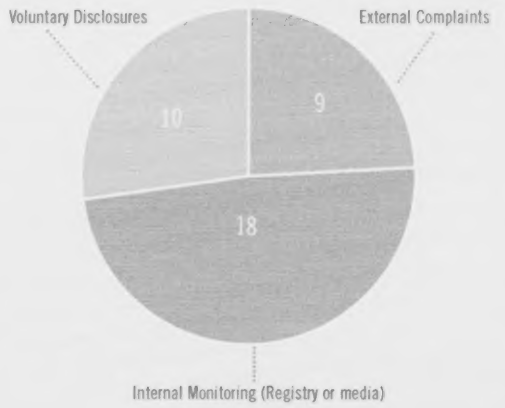
The legislation provides me with the ability to look into alleged breaches of the Act or the Code. Alleged breaches are identified by my Office or are brought to my attention through external complaints. Anyone can bring allegations of suspected breaches of the Act or the Code to my attention. I take all allegations seriously and each one is assessed based on its own merit before I determine a specific course of action. Allegations are received from government departments, parliamentarians and private citizens.

I also open files based on my own observations of information published in the media and other sources of information, or through monitoring of information submitted to the Registry. My staff monitors publicly available information to identify individuals, firms or organizations which may be conducting lobbying activities and determines if they are registered in accordance with the requirements of the Act. If they are not registered, I may choose to send them an advisory letter to inform them about the requirement to register under the Act, and make them aware of where they can obtain additional information.

During the past year, a number of lobbyists voluntarily disclosed that they had failed to comply with certain requirements of the Act, such as time limits for registration or reporting of monthly communications. I generally look favourably at such voluntary disclosures. However, before deciding on the appropriate course of action, I will direct that a review be conducted to assess the facts of the case, including the compliance history of the registrant.

The chart below demonstrates the breakdown of allegations of potential breaches of the Act or the Code that came to my attention in 2010-2011, by source.

BREAKDOWN OF ALLEGATIONS, BY SOURCE



CONDUCTING ADMINISTRATIVE REVIEWS

The Process

I will initiate an administrative review if, through monitoring of publicly available information, a complaint, or voluntary disclosure, I become aware of a potential breach of the Act or the Code. It is worth noting that an administrative review is not a formal investigation. This year, I initiated 37 administrative reviews.

The objective of an administrative review is to assess the allegation, research the facts of the case, and provide me with a report. Administrative reviews are often quite

extensive in order to provide sufficient information and analysis about the alleged contravention, to enable me to determine a suitable means of ensuring compliance. In addition, as my decisions are subject to judicial review in Federal Court, a well documented administrative review is imperative.

Outcomes of administrative reviews

There are four possible outcomes following an administrative review.

1. **The review is closed because the allegation was unfounded.** Reasons why allegations are unfounded include: it did not involve a registrable communication; the activity was not undertaken for payment; or, the 'significant part of duties' threshold for registration was not met by the corporation or organization employing the individual. In such cases, I will advise the person and the complainant of my decision by letter.

CASE STUDY 1: ALLEGATION UNFOUNDED

In June 2010, I initiated an administrative review after receiving a written complaint that an individual had engaged in unregistered lobbying. The complainant's allegation was based on information published on a website describing the individual as lobbying the federal government on policy issues. After conducting interviews with the complainant, the subject and his employer, my Investigations Directorate provided me with an Administrative Review Report stating that the allegations were unfounded, as there was no evidence that the subject had ever communicated or arranged meetings with federal public office holders for payment, and on behalf of his employer or client. The review was closed and I informed both the subject and the complainant of my findings.

2. **The review is closed even though the allegation is well-founded.** In cases where I consider the gravity of the transgression to be low, I may choose to employ alternative compliance measures that I consider better suited to ensuring compliance with the Act. These measures would include, for instance, educating the person on the requirements of the Act or requesting that a correction be made to the Registry of Lobbyists. In my view, such files do not warrant a referral to the Royal Canadian Mounted Police (RCMP) or a formal investigation under the Act. However, once an administrative review is closed, these individuals are subject to further monitoring by my Office to ensure that they remain in compliance.

CASE STUDY 2: ALLEGATION IS WELL-FOUNDED, ALTERNATIVE COMPLIANCE MEASURES ARE EMPLOYED

In May 2010, based on information received from the Registration and Client Services Directorate, I initiated an administrative review concerning an allegation that a consultant lobbyist had failed to register an undertaking, and disclose a reportable communication, within the time limits prescribed in the Act. Based on information provided to me in the Administrative Review Report, I determined that the allegation was well-founded. However, I decided that further investigation was not necessary given that the lobbyist had taken immediate steps to comply, and had a strong compliance history, having properly registered over 50 previous undertakings. The registrant was informed of the results of the administrative review in a letter advising him of the consequences of future non compliance. The individual is subject to further monitoring to ensure that they remain in compliance.

3. **A formal investigation is initiated when I determine that an alleged breach is serious and appears to be well-founded.** The *Lobbying Act* prescribes that I shall initiate an investigation if I have 'reason to believe' that an investigation is necessary to ensure compliance with the Act or the Code. In some instances, I may initiate more than one investigation based on information provided to me in a single Administrative Review Report.

CASE STUDY 3: TWO INVESTIGATIONS ARE INITIATED BASED ON INFORMATION OBTAINED DURING AN ADMINISTRATIVE REVIEW

In October 2009, I opened an administrative review after media reports and letters received from complainants, alleged that a lobbyist had placed a public office holder in a conflict of interest by organizing a fundraising event for the public office holder's benefit. During the course of the review, I learned that another registered lobbyist had also actively participated in the organization of the event. Over the following months, the Investigations Directorate verified information in the Registry of Lobbyists, conducted interviews with public office holders, lobbyists and other witnesses, and provided me with an Administrative Review Report. Based on this Report, I determined that there was reason to believe that both lobbyists were in breach of Rule 8 of the Lobbyists' Code of Conduct by actively participating in the organization of a political fundraising event for a public office holder, while lobbying the same individual. On July 29, 2010, I initiated two formal Investigations.

4. **The matter is referred to a peace officer (the RCMP in the case of the *Lobbying Act*) if I have 'reasonable grounds to believe' that an offence has been committed under the *Lobbying Act*, or any other Act of Parliament or of the legislature of a province.** In such cases, the Act prescribes that I suspend looking into a matter until it has been dealt with by the RCMP.

CASE STUDY 4: A FILE IS REFERRED TO THE RCMP, AND THE INVESTIGATION IS SUSPENDED

In November 2009, I opened an administrative review after a public office holder informed my Office that an unregistered lobbyist contacted his office in an attempt to arrange a meeting on behalf of a client of his firm. In May 2010, based on information provided to me in an Administrative Review Report, I initiated a formal investigation. However, I immediately suspended the investigation and referred the matter to the RCMP as I had reasonable grounds to believe that, by failing to register as a consultant lobbyist, the individual had committed an offence under the Lobbying Act. In November 2010, the RCMP advised me that they were unable to obtain sufficient evidence to proceed with charges. I decided, upon return of the file from the RCMP, that I had sufficient information to continue with a Lobbyists' Code of Conduct investigation. The investigation is ongoing.

It should be noted that the length of time required to complete an administrative review will vary in each case, depending on the complexity of the file, the availability of witnesses or evidence, and other factors. In addition, when a file is referred to the RCMP, I am no longer in control of the length of time it takes to complete a file.

The *Lobbying Act* also provides me with some degree of discretion. I may, for instance, refuse to look into a matter, or cease looking into a matter, if, in my opinion, it could more appropriately be dealt with under another Act of Parliament; the matter is not sufficiently serious or important; dealing with the matter would serve no useful purpose because of the length of time that has elapsed since the matter arose or for any other valid reason. More detail regarding the factors I consider when applying this discretion is provided in a document entitled "Guiding Principles and Criteria for Recommending Compliance Measures", available on my website.

The table below provides details of the 31 administrative reviews closed in 2010-2011.

OUTCOME	NUMBER OF ADMINISTRATIVE REVIEWS CLOSED
Unfounded – Not a registrable communication	2
Unfounded – Not for payment	1
Unfounded – No meetings arranged	1
Unfounded – Not an Improper Influence	1
Unfounded – Not a significant part of duties	1
Unfounded – Communication report filed within prescribed time limits	1
UNFOUNDED – SUBTOTAL	**7**
Well founded – Subject to education and further monitoring	17
Well founded – Investigation commenced*	4
WELL-FOUNDED – SUBTOTAL	**21**
Ceased – After consideration of the sufficiency and availability of information	1
Ceased – Subject dealt with in previous Reports on Investigations tabled in Parliament by the former Registrar of Lobbyists	2
CEASED – SUBTOTAL	**3**
TOTAL NUMBER OF ADMINISTRATIVE REVIEWS CLOSED, 2010-2011	**31**

* Note: Two of the four investigations commenced also resulted in referrals to a peace officer.

CONDUCTING INVESTIGATIONS

As required by the *Lobbying Act* (the Act), I will initiate an investigation if I have reason to believe an investigation is necessary to ensure compliance with the Act or the Code. In most cases, an investigation is initiated based on information brought to my attention in an Administrative Review Report. In some instances, I may also determine that an investigation is necessary before initiating or completing an administrative review.

During, or upon completion of an investigation, I might also determine that there are 'reasonable grounds to believe' that an offence has been committed under the Act. If so, the *Lobbying Act* requires that I immediately suspend the investigation and advise a peace officer having jurisdiction to investigate the offence (i.e., the RCMP). If the RCMP decides not to proceed, I may decide to look at the case from the perspective of a breach of the Code.

This year, I initiated eight investigations. I also exercised my authority to cease investigations in three instances. In two cases, the subject matter had been dealt with in previous or impending Reports on Investigation tabled or to be tabled in Parliament. In the other instance, I ceased the investigation after considering the sufficiency and availability of evidence.

As of March 31, 2011, 11 investigations remained in my Office's caseload. In all cases, the lobbyists are alleged, among other things, to have breached the Principles of 'professionalism' in the *Lobbyists' Code of Conduct* by failing to properly register, or by failing to observe the highest professional and ethical standards. Ten of the cases relate to individuals who engaged in activity alleged to require registration as a consultant lobbyist, and the other relates to activity allegedly performed by individuals employed by a corporation. Four of 11 cases were initiated internally.

primarily as a result of media monitoring. The remaining cases were opened after receiving external complaints, or information provided by federal public office holders. As of March 31, 2011, three of the Investigation Reports provided to me by the Investigations Directorate remained with the subjects of the investigations. As required under the Act, they have been provided with an opportunity to present their views prior to finalizing my Report on Investigation for tabling in both Houses of Parliament.

INVESTIGATION CASELOAD FOR 2010-2011	
Investigation caseload on April 1, 2010	9
New investigations initiated during 2010-2011	8
Investigations closed: Reports to Parliament	3
Investigations closed: Ceased	3
Investigation caseload on March 31, 2011	11

REFERRING FILES TO A PEACE OFFICER

The *Lobbying Act* requires that I suspend my investigation and immediately advise a peace officer whenever I have reasonable grounds to believe that an offence has been committed. In 2010-2011, I referred two investigation files to the RCMP on the basis of information provided in Administrative Review Reports prepared by my Office. In both cases, the RCMP elected not to initiate proceedings against the subjects. The RCMP also advised me that they would not proceed further with investigations relating to four referrals made by me in 2009-2010. In their responses, the RCMP advised me that they were unable to obtain sufficient evidence to lay a charge, that the subject matter did not lend itself to a strong likelihood of conviction, or that it was not in the public interest to proceed. The response times ranged from three months to 11 months in duration.

When a file is returned to my Office by the RCMP, I look at the matter from the perspective of the *Lobbyist's Code of Conduct*. I must determine if I have sufficient grounds to continue with a Code of Conduct investigation. Five of the six files returned by the RCMP this year met the criteria and are now the subject of ongoing *Lobbyists' Code of Conduct* investigations.

After considering the views of the RCMP in the remaining case, I determined that I did not have sufficient grounds to continue with a Code of Conduct investigation.

The *Lobbying Act* also requires that I must immediately suspend any investigation if I discover that the subject matter is already under police investigation. In 2010-2011, two files previously suspended by me for this reason were returned by the RCMP. Both matters are under review to determine whether a breach of the *Lobbyists' Code of Conduct* has occurred.

REPORTING TO PARLIAMENT

The *Lobbying Act* requires that, after conducting an investigation, I must prepare a report on the investigation, including the findings, conclusions and reasons for those conclusions, and submit it to both Houses of Parliament.

When investigating an alleged breach of the *Lobbyists' Code of Conduct*, I am in effect performing the function of an administrative tribunal – the Act states that "for the purpose of conducting the investigation, the Commissioner may [proceed] in the same manner and to the same extent as a superior court of record." I am, therefore, obligated to apply certain standards of procedural fairness and natural justice. To that end, the *Lobbying Act* requires that, before tabling a Report on Investigation in both Houses of Parliament, I must provide the subject under investigation with an opportunity to present his or her views. My practice is to share a copy of my Office's Investigation Report with the subject, requesting that he or she respond within 30 days. Extensions to that period have been granted upon request.

My Reports on Investigation take into account the Investigation Report that was provided to me by my Office, as well as any views presented by the subject. In 2010-2011, five Investigation Reports had been submitted to individuals to provide them with an opportunity to present their views. As previously mentioned, at the end of March 2011, three Reports remained with subjects in order to allow them to present their views for my consideration.

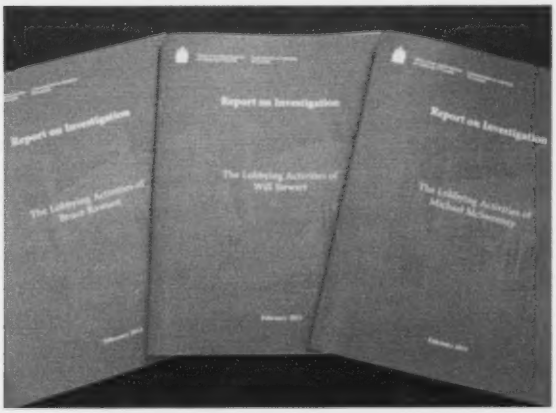
Three Reports on Investigation were tabled in February 2011

Although breaches of the Code do not carry penalties in terms of fines or jail terms, the public disclosure of the offence by tabling Reports on Investigation in Parliament serves as a specific deterrent for the individual in question and as a general deterrent for all lobbyists. I tabled three such Reports on Investigation in 2010-2011, on the lobbying activities of Mr. Bruce Rawson, Mr. Michael McSweeney, and Mr. Will Stewart.

BRUCE RAWSON

The Report on Investigation relating to the lobbying activities of Mr. Bruce Rawson involved a case of paid consultant lobbying conducted by Mr. Rawson in 2004, on behalf of two British Columbia mining companies. In June 2006, the Registrar of Lobbyists, my predecessor, determined that there were reasonable grounds to believe that a breach of the *Lobbyists' Code of Conduct* had occurred and commenced an investigation. The file was transferred to the RCMP, who decided not to proceed with an investigation under the *Lobbyists Registration Act*. I inherited this case when I took office and completed the investigation in 2010.

I concluded that Mr. Rawson engaged in activities that required him to register as a lobbyist when, for payment, he arranged client meetings with public office holders. By failing to properly register these activities, he was in breach of the Principle of Professionalism, Rule 2 (Accurate Information) and Rule 3 (Disclosure of Obligations) of the *Lobbyists' Code of Conduct*.



MICHAEL MCSWEENEY

In this Report on Investigation, I found that Mr. Michael McSweeney, an in house (organization) lobbyist employed by the Cement Association of Canada, was in breach of Rule 8 (Improper Influence) of the *Lobbyists' Code of Conduct*. Mr. McSweeney helped organize a fundraising dinner in September 2009, for then Minister of Natural Resources, the Honourable Lisa Raitt.

The investigation concluded that Mr. McSweeney played a key role in the organization of the event by selling tickets, an activity which was seen to advance the Minister's private interest. During that period, Mr. McSweeney was registered to lobby on behalf of the Cement Association of Canada in respect of subjects that fell within the purview of the Minister of Natural Resources, and communicated with the Minister directly in respect of registrable subjects.

I concluded that the intersection of the lobbying and political activities placed the Minister in an apparent conflict of interest and, therefore, that Mr. McSweeney was in breach of Rule 8 (Improper Influence) of the *Lobbyists' Code of Conduct*.

WILL STEWART

During the course of the administrative review of Mr. Michael McSweeney's case, I was made aware that another lobbyist also played a role in organizing the same fundraising event for the Minister of Natural Resources. Mr. Will Stewart was a consultant lobbyist with undertakings on behalf of various clients. I commenced an investigation in July 2010, which concluded that Mr. Stewart played a major role in the organization of the event, including selling tickets.

During that same period, Mr. Stewart was registered to lobby in respect of subjects that fell within the purview of the Minister of Natural Resources, and communicated with her directly in respect of registrable subjects.

I concluded, in my Report on Investigation, that Mr. Stewart's actions placed the Minister in an apparent conflict of interest and that he was, therefore, in breach of Rule 8 (Improper Influence) of the *Lobbyists' Code of Conduct*.

MANAGING OUR CASELOAD

The number of administrative reviews and investigations has increased since my Office was established in July 2008. This year alone, more than twice as many administrative reviews have been opened as in previous years, and three times as many were closed. In response to the increasing caseload, I implemented new processes and improved existing ones.

In order to manage the growing caseload, several initiatives were undertaken by my Office. First, a process was put in place to ensure that a preliminary assessment of each allegation is undertaken to determine the most appropriate course of action for ensuring compliance. Existing processes were streamlined to allow for an early determination of whether a transgression is minor in nature, or more serious. Minor transgressions, such as late registrations or voluntary disclosures of non-compliance, are examined in light of the registrant's compliance history and whether measures have been taken to avoid future transgressions. In more serious cases, such as unregistered lobbying, a more extensive administrative review is conducted, involving interviews and more detailed analysis.

In 2010-2011, a document entitled "Guiding Principles and Criteria for Recommending Compliance Measures" was prepared by my Office to formally document the approach it follows in recommending the proper course of action in each case of an alleged breach of the Act or the Code, taking into account the gravity of the alleged offence. These principles help ensure that breaches of the Act and Code are treated in a fair and consistent manner. This document is available on my Office's website.

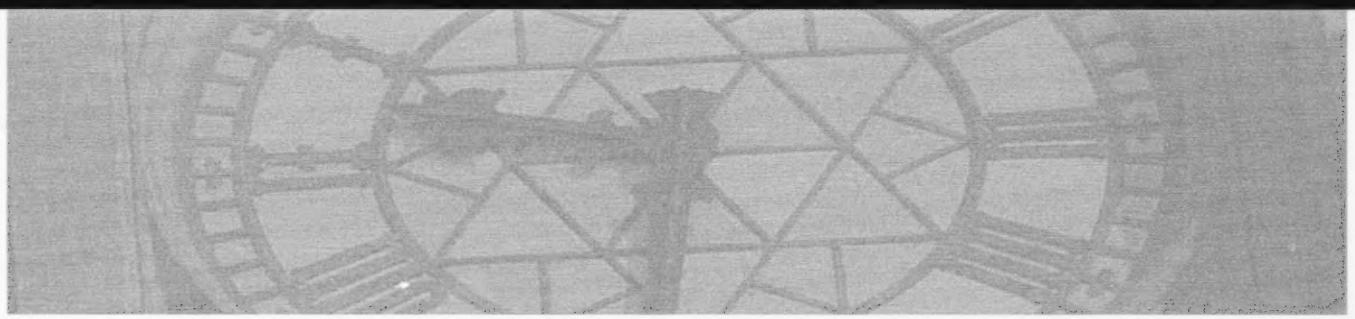
As my Office was completing its third year of operation, I decided it was timely to conduct an internal review of all files opened or closed since its creation in July 2008. I commenced a review in March 2011, to provide me with confidence in the accuracy of the data about each and every file that has ever been dealt with by my Office. In addition, I am reviewing files opened and closed by my predecessor, the Registrar of Lobbyists, which were transferred to my Office upon its establishment. I intend to make the results of this review public in my next Annual Report.

APPLYING COMPLIANCE MEASURES

The *Lobbying Act* sets the penalties, including fines and jail terms, to be applied upon conviction in a court of law for an offence under the Act. If, during an investigation, I believe 'on reasonable grounds' that a person has committed an offence, I must advise a peace officer and immediately suspend my investigation. This is the only enforcement option available to me under the legislation. The peace officer having jurisdiction to investigate the matter, generally the RCMP in the case of the *Lobbying Act*, will consider the case in consultation with legal counsel at the Department of Justice and federal prosecutors at the Department of Public Prosecutions. Together, they determine whether or not to lay charges.

For less serious transgressions, such as late filings of monthly communication reports, I exercise discretion when determining compliance measures. In my opinion, the public interest would not be well served if I were to refer every case, regardless of its gravity, to the RCMP. It is my view that less serious offences do not warrant a criminal investigation. I believe that compliance is sometimes best ensured through a process of education, correction of information in the Registry of Lobbyists, and ongoing monitoring of the lobbyists at fault.

Educating lobbyists who commit less serious breaches of the Act and monitoring their activities are suitable means of achieving compliance and ensuring transparency of lobbying activities conducted at the federal level. Transparency is best achieved when the information in the Registry of Lobbyists is up-to-date and accurate. That is the reason why, for less serious transgressions, I focus on ensuring that registrants clearly understand the requirements of the Act and the Code, and can demonstrate that transgressions will



be avoided in the future. In 2010-2011, I opened 10 administrative reviews as a result of voluntary disclosures by lobbyists.

CASE STUDY 5: A CASE OF VOLUNTARY DISCLOSURE

In November 2010, my Office received a letter from the officer responsible for filing returns for a corporation registered as employing in-house lobbyists. The registrant informed my Office that he had neglected to file a communication report for an oral and arranged meeting between one of his employees and a designated public office holder occurring in August 2010 and, as such, failed to file a return within the time limit prescribed by the Lobbying Act. In response, the registrant was advised to immediately file a return in respect of the reportable communication, and provide my Office with a written explanation of the delay.

An administrative review was conducted. Although the review uncovered that the individual had breached the Act by failing to report a prescribed communication within the time limits set out in the Act, I decided to close the file and further educate the registrant, for the following reasons:

- *the registrant voluntarily disclosed the omission;*
- *the registrant's compliance history is strong, having in the past reported numerous communications within the time limit prescribed in the Act; and*
- *the registrant demonstrated that the corporation had taken measures to avoid similar transgressions in the future.*

The registrant was reminded, in writing, that failing to file a monthly communication return within the time limit prescribed constituted a breach of the Lobbying Act. The registrant was also informed no further action would be taken. The registrant continues to be monitored to ensure ongoing compliance.

Although I feel that education and monitoring are important compliance tools, I recognize that certain minor transgressions, such as habitual late filing, do negatively affect the transparency of lobbying activities. Other than referrals to a peace officer, the *Lobbying Act* offers no enforcement alternatives. I believe that such transgressions may warrant sanctions or penalties that would fall somewhere between the two extremes currently being utilized: the system of education, correction and monitoring I employ, at one end, and the tabling of a Report on Investigation in both Houses of Parliament and/or criminal proceedings with resulting fines, jail terms and possible prohibition, at the other.

To address this lack of flexibility in my enforcement options, in my March 2011 submission to the House of Commons Standing Committee on Access to Information, Privacy and Ethics[3], I recommended the establishment of an administrative monetary penalty system (AMP). In my view, not all transgressions have the same gravity. An AMP system would introduce a continuum of progressively more severe sanctions appropriate to the existing range of possible breaches. Publicizing when and to whom administrative monetary penalties are being applied would also serve as a general deterrent to all lobbyists. Such systems exist in other lobbying legislation across Canada, as well as in other federal legislation.

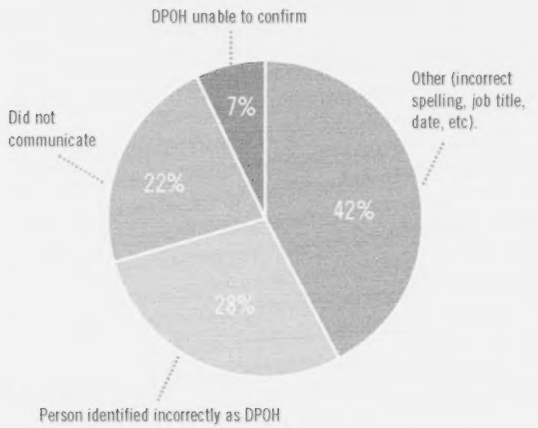
VERIFYING THE ACCURACY OF MONTHLY COMMUNICATION REPORTS

The *Lobbying Act* requires registered lobbyists to disclose 'oral and arranged' communications about registrable subject matters with designated public office holders (DPOHs) on a monthly basis. These reports provide the public with information about the date and subject matter of these communications, as well as the name and title of the DPOH with whom the communication took place. In addition to verifying initial registrations for completeness, my Office validates a sample of monthly communication reports for accuracy by requesting written confirmation from the relevant DPOH.

[3] Karen E. Shepherd, "Administering the *Lobbying Act* — Observations and Recommendations Based on the Experience of the Last Five Years", available at: http://www.ocl-cal.gc.ca.

The following table highlights the types and frequency of errors reported by the DPOHs contacted.

TYPES OF ERRORS REPORTED BY DPOHs THROUGH VERIFICATION OF MONTHLY COMMUNICATION REPORTS[4].



Each month, my Office verifies approximately five percent of the communication reports filed in the Registry of Lobbyists. From April 2010 until February 2011, more than 70 letters were sent to designated public office holders to verify 396 of approximately 8,400 reports submitted by registrants. Respondents identified 67 errors, the vast majority of which were of a clerical nature (e.g., names spelled incorrectly)[4]. The lobbyists were requested to make the appropriate corrections to their reports.

REVIEWING APPLICATIONS FOR EXEMPTIONS FROM THE FIVE-YEAR PROHIBITION ON LOBBYING

In 2008, the *Lobbying Act* introduced a five-year prohibition on lobbying for former designated public office holders. This prohibition is intended to prevent former high-level federal decision makers from using advantages and personal connections derived from their government positions for lobbying purposes. However, the Act provides me with the authority to exempt individuals from the application of the prohibition, if I am of the opinion that such an exemption would not be contrary to the purposes of the Act.

A process to review applications for exemption was developed and implemented to ensure that I am provided with sufficient information regarding whether to grant an exemption or not. Although it is not prescribed by the Act, I have decided, in the interest of fairness, to provide the applicant with an opportunity to present his or her views on my intent to grant or deny an exemption before I render my final decision.

The Act sets out circumstances or factors that I may consider when determining whether an exemption to the five year prohibition should be granted, such as:

- the individual was a designated public office holder for a short period;
- the individual was a designated public office holder on an acting basis;
- the individual was employed under a program of student employment; or
- the individual had administrative duties only.

In 2010-2011, I received five applications for exemption from the five year prohibition and one application was carried over from the previous fiscal year. Three of the applications were withdrawn after the applicants were made aware of the limited set of criteria for granting an exemption under the Act. I denied two of the remaining three exemption requests because the applicants could not demonstrate that their employment as a designated public office holder fell within the criteria for exemptions set out in the Act. I granted one exemption to an individual formerly employed as a summer student in a Minister's Office, whose duties were primarily administrative in nature. As required by the Act, the exemption was made public on my website. As of March 31, 2011, there were no ongoing exemption reviews.

[4] Monthly communication reports submitted during March and April 2011, reporting oral and arranged communications that took place in February and March 2011, have not yet been verified. Sampling is done on a monthly basis.

Exemption Review Service Standards

In light of the experience my Office and I have acquired in applying the requirements of the Act with respect to exemption requests, I decided it was time to establish clear service standards to monitor our performance in responding to such requests. In 2010-2011, my Office developed and implemented the following service standards that apply to the length of time it takes to complete selected portions of the exemption review process.

1. **Acknowledgement of application**: Upon receipt of an application for exemption, the Commissioner endeavours to send an acknowledgement letter to the applicant within seven days of the application being received.

2. **Commissioner's Letter of Intent**: The Commissioner endeavours to inform the applicant, in writing, of the decision that she intends to make and the reasons for the decision within 60 days of receiving the application containing all required information.

3. **Commissioner's final decision**: The applicant will be given a reasonable opportunity to present his or her views regarding the decision that the Commissioner intends to make (through the Commissioner's Letter of Intent). The Commissioner endeavours to advise the applicant, in writing, of her final decision (and the reasons for that decision) within 30 days from receipt of the applicant's response to the Commissioner's Letter of Intent.

4. **Publication of exemptions granted**: When an exemption has been granted, the Commissioner endeavours to make her decision and the reasons for it public, within 48 hours of notifying the applicant, by posting a notice on the Office's website.

These standards will be implemented in 2011-2012 and reported on in future annual reports.

ADDRESSING COURT CHALLENGES

One ongoing application for judicial review of decisions made by my predecessor, the Registrar of Lobbyists, was finally decided this year. In March 2007, the Registrar of Lobbyists completed four Reports on Investigation concerning allegations of unregistered lobbying by Mr. Neelam Makhija. The Reports, which were tabled in both Houses of Parliament, concluded that Mr. Makhija contravened the former *Lobbyists Registration Act* when he failed to register his activities on behalf of four corporations, and that his activities were in breach of the *Lobbyists' Code of Conduct*.

Mr. Makhija sought judicial review of the Registrar's decisions, as set out in the four reports, claiming that he was not a lobbyist and that the Registrar had made a legal error. He asked that the decisions be overturned and that the reports be withdrawn from Parliament. In March 2008, the Federal Court overturned the Registrar's decisions and ordered that the four Reports on Investigation that were tabled in Parliament be withdrawn. This decision placed into question the Registrar's ability to table findings regarding apparent breaches of the Act and to initiate a Code of Conduct investigation of persons failing to register as lobbyists.

That decision was appealed by the Attorney General and the Federal Court of Appeal quashed the decision of the Federal Court, concluding that the Registrar was entitled to conduct an investigation once he had reasonable grounds to believe that a breach of the Code had occurred, even if the person under investigation had not registered as a lobbyist. That decision resolved the question of the Registrar's jurisdiction raised by the Federal Court. Leave to appeal the decision to the Supreme Court of Canada was sought, but that application was denied by the Supreme Court.

As a result, the application for judicial review was sent back to the Federal Court to make a decision based on the merits of Mr. Makhija's application for judicial review. The Federal Court declared in February 2010 that the Registrar's conclusions regarding the breaches of the

Lobbyists' Code of Conduct were reasonable and thus valid and legal in the circumstances. With respect to the Registrar's conclusion that Mr. Makhija had breached the *Lobbyists Registration Act*, the Court declared that the Registrar was not entitled to reach that conclusion under the Act and quashed that portion of each of the four Reports on Investigation tabled by the Registrar. This decision was appealed to the Federal Court of Appeal and finally decided in December 2010, when the Federal Court of Appeal affirmed the Federal Court's decision.[5]

The question of the Commissioner's ability to investigate an apparent breach of the Act or the Code had been clarified in July 2008, when amendments to the legislation contained in the *Lobbying Act* set out the authority of the Commissioner to launch an investigation when the Commissioner considers it necessary to ensure compliance with the Act or the Code.

[5] Neelam Makhija v. Attorney General of Canada, 2010 FCA 342.

ANNEX A

LIST OF ACRONYMS AND ABBREVIATIONS

Act	*Lobbying Act*
AMP	Administrative Monetary Penalties
Code	*Lobbyists' Code of Conduct*
COGEL	Council on Governmental Ethics Laws
DPOH	Designated Public Office Holder
FC	Federal Court
FCA	Federal Court of Appeal
LRS	Lobbyists Registration System
Office	Office of the Commissioner of Lobbying
POH	Public Office Holder
Registry	Registry of Lobbyists
RCMP	Royal Canadian Mounted Police

ANNEX B

ABOUT THE OFFICE

Who We Are

The Commissioner of Lobbying is an independent Agent of Parliament, appointed by Parliament under the *Lobbying Act* (the Act) for a term of seven years. The purpose of the Act is to ensure transparency and accountability in the lobbying of public office holders, in order to contribute to confidence in the integrity of government decision making. The Commissioner administers the Act by:

- maintaining the Registry of Lobbyists, which contains and makes public the registration information disclosed by lobbyists, as well as their monthly communications with designated public office holders;
- developing and implementing educational programs to foster public awareness of the requirements of the Act; and
- conducting reviews and investigations to ensure compliance with the Act and the *Lobbyists' Code of Conduct* (the Code).

The Commissioner is supported in her work by the Office of the Commissioner of Lobbying, which was established in 2008 under the Act. The Commissioner reports annually to Parliament on the administration of the Act and the Code and is required to table reports on any investigations conducted in relation to the Code.

What We Do

MAINTAIN THE REGISTRY

The Office works to ensure that the Lobbyists Registration System is an easy-to-use tool for lobbyists to register their lobbying activities. To this end, the system is refined on an ongoing basis. In addition, systems and processes are in place to ensure that interruptions and downtime are kept to a minimum. This allows Canadians access to the Registry of Lobbyists 24 hours a day, seven days a week.

DELIVER AN EDUCATION AND AWARENESS PROGRAM

The Office undertakes many activities to ensure public office holders, lobbyists, their clients and Canadians are aware of the requirements of the Act. We have strategically focused our efforts on key activities to reach the most people in the most cost-effective way possible.

ENSURE COMPLIANCE

The Office strives to ensure lobbyists are compliant with the *Lobbying Act* and the *Lobbyists' Code of Conduct*. A system that includes administrative reviews and investigations has been developed to examine alleged breaches of the Act or the Code. Rigorous monitoring and verification processes also contribute to compliance.

OUR ORGANIZATION

The Office, when fully staffed, has 28 full-time employees and an overall budget of about $4.5 million. It is divided into four groups.

- **The Office of the Commissioner** includes the Commissioner, Legal Counsel, a Senior Advisor, and an Administrative Assistant. The Commissioner has the rank and powers of a deputy head of a federal department. This group provides legal advice and opinions to the Office, as well as financial oversight to fulfill all statutory requirements and to uphold central agency policies.

- **The Office of the Deputy Commissioner** is responsible for integrated strategic and operational planning, including the coordination and implementation of performance measurement, risk management, and human resources management. This unit also provides strategic policy and communications advice, and coordinates all outreach activities. Financial and administrative services for the organization are handled by this unit, which also works to address all corporate needs relating to security, facilities management and workplace safety.

- **The Registration and Client Services Directorate** is responsible for developing and maintaining the Lobbyists Registration System (LRS) and the online Registry of Lobbyists. The LRS allows lobbyists to register their lobbying activities and perform transactions, such as amendments, renewals and terminations. The Registry allows Canadians to search for lobbyists and lobbying activity. Employees of the Registration and Client Services Directorate process lobbyists' registrations and offer client service to registrants, public office holders and the general public.

- **The Investigations Directorate** is responsible for ensuring compliance with the *Lobbying Act* and the *Lobbyists' Code of Conduct*. Employees in this directorate monitor lobbying activities, verify the accuracy of monthly communication reports submitted by lobbyists, review and investigate allegations of non-compliance, and review applications for exemptions to the five-year prohibition on lobbying for former designated public office holders.

ANNEX C

LOBBYING ACT

Purpose and Description

The *Lobbying Act* (the Act) provides for the public registration of individuals who are paid to communicate with public office holders (POHs) with regard to certain matters as described in the legislation. Public office holders are defined in the Act as virtually all persons occupying an elected or appointed position in the Government of Canada, including members of the House of Commons and the Senate and their staff, as well as officers and employees of federal departments and agencies, members of the Canadian Forces and members of the Royal Canadian Mounted Police.

The preamble to the Act sets out four basic principles pertaining to the registration of lobbyists:

- Free and open access to government is an important matter of public interest.
- Lobbying public office holders is a legitimate activity.
- It is desirable that public office holders and the public be able to know who is engaged in lobbying activities.
- A system for the registration of paid lobbyists should not impede free and open access to government.

Individuals must be registered if they lobby, i.e., if they communicate with federal POHs, for payment, whether formally or informally, with regard to:

- the making, developing or amending of federal legislative proposals, bills or resolutions, regulations, policies or programs;
- the awarding of federal grants, contributions or other financial benefits; and
- in the case of consultant lobbyists, the awarding of a federal government contract and arranging a meeting between their client and a POH.

The *Lobbying Act* provides for the following three categories of lobbyists:

CONSULTANT LOBBYISTS

Consultant lobbyists are individuals who are paid to lobby on behalf of a client. Consultant lobbyists may be government relations consultants, lawyers, accountants or other professional advisors who provide lobbying services for their clients. They must file a registration for each individual undertaking (i.e., for each mandate from a client).

IN-HOUSE LOBBYISTS (CORPORATIONS)

In-house lobbyists (corporations) are employees of corporations that conduct commercial activities for financial gain and who lobby as a significant part of their duties. These individuals are usually full time employees who devote a significant part of their duties to public affairs or government relations work. As the registrant, the most senior paid officer must register the corporation if the total lobbying activity of all employees represents a significant part of the duties of one equivalent full-time employee. The registration must include the names of all senior officers who engage in any lobbying activity, as well as the name of any employee (senior officer or otherwise) who individually devotes a significant part of his or her duties to lobbying activities.

IN-HOUSE LOBBYISTS (ORGANIZATIONS)

In-house lobbyists (organizations) are employees of non-profit organizations, such as associations, charities and foundations, including non-profit corporations. As the registrant, the most senior paid officer of such an organization must register the names of all employees engaged in lobbying activities, if the total lobbying activity of all such employees represents a significant part of the duties of one equivalent full time employee.

DISCLOSURE REQUIREMENTS

All three categories of lobbyists are required to disclose certain information within time limits specified in the Act. This information includes:

- names of their clients, or corporate or organizational employers;
- names of the parent or subsidiary companies that would benefit from the lobbying activity;
- organizational members of coalition groups;
- specific subject matters of lobbying;
- names of the federal departments or agencies contacted;
- sources and amounts of any public funding received; and
- communication techniques used, such as meetings, telephone calls or grass roots lobbying.

Although their reporting requirements differ slightly, corporations and organizations must also provide general descriptions of their business or activities.

Regulations

The *Lobbying Act* authorizes the Governor in Council to make regulations respecting the submission of returns and other registration requirements of the Act, and in relation to various aspects of the lobbyists' registration regime.

The *Lobbyists Registration Regulations* set the form and manner in which lobbyists must file returns required by the Act. Returns disclose information regarding the lobbying activities of registrants. The Regulations also set out additional information to be disclosed in returns, beyond what is required by the Act. They set the timeframes to respond to a request by the Commissioner for correction or clarification of information submitted in returns. The Regulations also describe the type of communication that will trigger monthly returns. The form and manner of registration set out in the *Lobbyists Registration Regulations* are reflected in the Lobbyists Registration System interface that is provided to users of the system.

The Act defines designated public office holders to include ministers, ministers of state and ministerial staff, deputy heads, associate deputy heads and assistant deputy ministers and those of comparable ranks throughout the public service. The *Designated Public Office Holder Regulations* further designate various positions in the Canadian Forces and the Privy Council Office, as well as the Comptroller General of Canada, with the result that the persons occupying those positions are included as "designated public office holders" under the *Lobbying Act*. The Regulations came into force on July 2, 2008 and further designated the following 11 positions or classes of positions:

- Chief of the Defence Staff;
- Vice Chief of the Defence Staff;
- Chief of Maritime Staff;
- Chief of Land Staff;
- Chief of Air Staff;
- Chief of Military Personnel;
- Judge Advocate General;
- any position of Senior Advisor in the Privy Council to which the office holder is appointed by the Governor in Council;
- Deputy Minister (Intergovernmental Affairs) Privy Council Office;
- Comptroller General of Canada; and
- any position to which the Office holder is appointed pursuant to paragraphs 127.1(1)(a) or (b) of the *Public Service Employment Act*.

On September 20, 2010, the Regulations were amended to add three more classes of positions to the category of designated public office holder:

- the position of Member of the House of Commons;
- the position of Member of the Senate; and
- any position on the staff of the Leader of the Opposition in the House of Commons or on the staff of the Leader of the Opposition in the Senate, that is occupied by a person appointed pursuant to subsection 128(1) of the *Public Service Employment Act*.

ANNEX D

LOBBYISTS' CODE OF CONDUCT

Under the *Lobbying Act* (the Act), the Commissioner of Lobbying is responsible for developing a lobbyists' code of conduct. The current *Lobbyists' Code of Conduct* (the Code) is the result of extensive consultations with a large number of people and organizations with an interest in promoting public trust in the integrity of government decision making. The Code, which came into effect on March 1, 1997, is not a statutory instrument. The Commissioner is, however, responsible for enforcement of the Code.

The purpose of the Code is to assure the Canadian public that lobbyists are required to adhere to high ethical standards with a view to conserving and enhancing public confidence and trust in the integrity, objectivity and impartiality of government decision making. In this regard, the Code complements the disclosure and registration requirements of the Act.

The Code is based on the same four basic principles stated in the *Lobbying Act*.

- Free and open access to government is an important matter of public interest.
- Lobbying public office holders is a legitimate activity.
- It is desirable that public office holders and the public be able to know who is engaged in lobbying activities.
- A system for the registration of paid lobbyists should not impede free and open access to government.

The Code is made up of the following three overriding principles followed by eight specific rules:

Principles

INTEGRITY AND HONESTY

Lobbyists should conduct with integrity and honesty all relations with public office holders, clients, employers, the public and other lobbyists.

OPENNESS

Lobbyists should, at all times, be open and frank about their lobbying activities, while respecting confidentiality.

PROFESSIONALISM

Lobbyists should observe the highest professional and ethical standards. In particular, lobbyists should conform fully with not only the letter but the spirit of the *Lobbyists' Code of Conduct* as well as all the relevant laws, including the *Lobbying Act* and its regulations.

Rules

TRANSPARENCY

1. Identity and purpose

Lobbyists shall, when making a representation to a public office holder, disclose the identity of the person or organization on whose behalf the representation is made, as well as the reasons for the approach.

2. Accurate information

Lobbyists shall provide information that is accurate and factual to public office holders. Moreover, lobbyists shall not knowingly mislead anyone and shall use proper care to avoid doing so inadvertently.

3. Disclosure of obligations

Lobbyists shall indicate to their client, employer or organization their obligations under the *Lobbying Act*, and their obligation to adhere to the *Lobbyists' Code of Conduct*.

CONFIDENTIALITY

4. Confidential information

Lobbyists shall not divulge confidential information unless they have obtained the informed consent of their client, employer or organization, or disclosure is required by law.

5. Insider information

Lobbyists shall not use any confidential or other insider information obtained in the course of their lobbying activities to the disadvantage of their client, employer or organization.

CONFLICT OF INTEREST

6. Competing interests

Lobbyists shall not represent conflicting or competing interests without the informed consent of those whose interests are involved.

7. Disclosure

Consultant lobbyists shall advise public office holders that they have informed their clients of any actual, potential or apparent conflict of interest, and obtained the informed consent of each client concerned before proceeding or continuing with the undertaking.

8. Improper influence

Lobbyists shall not place public office holders in a conflict of interest by proposing or undertaking any action that would constitute an improper influence on a public office holder.

ANNEX E

STATISTICAL INFORMATION

Subject matter of lobbying activities

The following table shows, in rank order, the 20 subject matters most frequently identified by lobbyists in their registration for this fiscal year. The remaining two columns show the rank ordering of subject matters for the two previous fiscal years. This information is based on the registrations that were active on March 31, 2011.

SUBJECT MATTER OF LOBBYING	2010-2011	2009-2010	2008-2009
Industry	1	1	1
Taxation and Finances	2	2	3
Environment	3	3	2
International Trade	4	4	4
Health	5	5	5
Science and Technology	6	6	6
Transportation	7	7	7
Consumer Issues	8	8	8
Agriculture	9	14	14
Energy	10	10	9
Employment and Training	11	11	10
Government Procurement	12	12	13
Aboriginal Affairs	13	12	13
Infrastructure	14	9	12
Regional Development	15	13	11
International Relations	16	15	14
Defence	17	18	16
Financial Institutions	18		
Intellectual Property	19	19	16
Internal Trade	20	20	20

Government institutions

The following table shows, in rank order, the 20 federal government institutions most frequently identified by lobbyists in their registration for this fiscal year. The remaining two columns show the rank ordering of institutions for the two previous fiscal years. This information is based on the registrations that were active on March 31, 2011.

GOVERNMENT INSTITUTION	2010-2011	2009-2010	2008-2009
Industry Canada	1	1	1
House of Commons	2	11	8
Finance Canada	3	2	2
Prime Minister's Office	4	3	4
Foreign Affairs and International Trade Canada	5	5	5
Privy Council Office	6	4	3
Environment Canada	7	6	6
Senate of Canada	8	9	13
Health Canada	9	7	7
Transport Canada	10	8	9
Natural Resources Canada	11	10	10
Agriculture and Agri-Food Canada	12	14	12
Treasury Board Secretariat	13	12	11
Public Works and Government Services Canada	14	13	14
Department of National Defence	15	15	16
Indian and Northern Affairs Canada	16	16	15
Department of Canadian Heritage	17	17	18
Justice Canada	18	18	20
Human Resources and Skills Development Canada	19	19	19
Fisheries and Oceans Canada	20	-	-